



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/172832

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Grant County Department of Social Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone from Madison, Wisconsin on April 19, 2016.

The issue for determination is whether petitioner's patient liability amount was correctly calculated.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not present at April 19, 2016
Hearing)

[REDACTED]
[REDACTED]
[REDACTED]

Represented by:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED], ESS

Grant County Department of Social Services
Hwys 35 and 61 South
PO Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 84 years old) is a resident of Grant County, Wisconsin.
2. Petitioner resides in a nursing home and is an institutionalized MA recipient.
3. Petitioner receives income from a farming operation and files federal tax form Schedule F ("Profit or Loss From Farming") to report that income; for 2015 her Schedule F (line 36) showed a profit of \$1,306 for the year.
4. When calculating petitioner's MA patient liability amount the County counted \$108.83 per month as income to petitioner from her farming operation (\$1,306.00/year divided by 12 months/year is \$108.83/month).

DISCUSSION

The law is clear that, with only certain very limited deductions, all of the income of an MA recipient who is in an institution must be applied to the cost of the institution. Wis. Stat. § 49.45(7)(a) (2013-14); Wis. Admin. Code § DHS 103.07(1)(d) (July 2015); *Medicaid Eligibility Handbook* ["MEH"] 27.7. The amount that the recipient is required to pay for the cost of the institution is known as the *patient liability amount* or *cost share*. MEH 27.7.1.

The amount of the patient liability depends on the recipient's income, less certain deductions. For purposes of computing the patient liability amount the only allowed deductions are the following: personal needs allowance; if employed, the first \$65 and one-half the remainder of gross earnings; the cost of health insurance; amounts incurred for necessary medical or remedial care recognized under state law but not covered by MA; the actual amount (subject to a maximum) paid for the support of a person for whom the institutionalized person is legally responsible; expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees; and, the monthly cost of maintaining a home -- but only up to a certain maximum amount and only if the following 2 conditions are met: (1) a physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within a certain time limit, and; (2) the person's spouse is not living in the home or apartment. 42 C.F.R. § 435.725 (2016); MEH 27.7.1. & 15.7.1.; DHA Case No. MED-53/97033 (Wis. Div. Hearings & Appeals; Proposed Decision October 8, 2008; Final Decision December 8, 2008 (DHS); See also, Wis. Admin. Code §§ DHS 103.07(1)(d) & 103.06(1)(b)2. & 3. (July 2015).

In the case of income from farming operations IRS tax form Schedule F ("Profit or Loss From Farming") from the previous tax year must be used to figure the income (unless the farm has not been in operation for at least 6 months or was not in operation for at least 1 month in the previous year). MEH 15.6.5.1 & 15.6.5.2.1.c. The income to be used is the net farm profit or loss found on line 34 of Schedule F. MEH 15.6.1.4 & 15.6.5.1; See, F-16037 (02/14) *Self-Employment Income Worksheet -- Sole Proprietor Farm and Other Business*. In petitioner's case this is a profit of \$1,306.00.

Petitioner argues that her 2015 Federal 1040 tax return (line 37) shows a loss of \$830. However, this is only after applying the following deductions from her farm income: NOL (1040, line 21); self-employment tax (1040, line 27); and, self-employment health insurance deduction (1040, line 29). As discussed above, those deductions are not allowed for purposes of calculating the MA patient liability amount.

CONCLUSIONS OF LAW

For the reasons explained above, petitioner's patient liability amount was correctly calculated.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 5th day of May, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 5, 2016.

Grant County Department of Social Services
Division of Health Care Access and Accountability